

To: Fajardo, Juan[Fajardo.Juan@epa.gov]
From: Simshauser, Peter
Sent: Thur 4/20/2017 1:53:11 PM
Subject: RE: Lower Passaic River

Juan,

I am sorry that I missed your call yesterday and was unable to return it. I have meetings today but am more open tomorrow. Let's speak at a convenient time after you have an opportunity to review the below.

Following up on our discussion last week, I've confirmed with 21st Century Fox America, Inc. (21CFA) that it does not want its pending FOIA request to unnecessarily inconvenience you or others at EPA. As discussed, we do want to ensure that we receive a meaningful response to the FOIA request at a future time. From 21CFA's perspective, that time could be one that both (1) enables EPA to gather in due course the documents that it will be reviewing relative to 21CFA in connection with EPA's process for making the determination described in Eric Wilson's March 30 letter (i.e., designating some PRPs as "responsible for the release or discharge of dioxins, furans, or polychlorinated biphenyls" and encouraging them to "participate in implementing or funding the remedy selected for the lower 8.3 miles of the Lower Passaic River," and designating other PRPs for participation in a possible "cash out settlement" process); and (2) enables 21CFA, after receiving these documents, a reasonable opportunity to submit to EPA any responsive information it wishes the agency to consider before EPA makes the above determination. As noted, 21CFA unquestionably should be designated to participate in the cash out settlement process. As acknowledged by NJDEP, which is overseeing the cleanup of the property that 21CFA's predecessor formerly owned in Newark (100 Lister Avenue), the property is not contaminated by dioxins, furans or PCBs; moreover, it is not and was not a source of them to the river.

In the somewhat comparable context of a request to produce documents in litigation, we could agree that the date for EPA to produce documents would be extended, and that we would confer in coming weeks or months about an agreed response date consistent with above. I have not yet researched whether a similar arrangement is possible in the context of a FOIA request. Can you please advise me of your understanding in that regard? Of course, if you do not believe that the above approach is agreeable, please advise.

Also, I want to renew 21CFA's request, which I conveyed when we spoke last week, that EPA meet with 21CFA's expert consultants prior to making the above-described determination, and

not merely after doing so. We believe that such a meeting, to discuss the contents of a written presentation that we will be submitting to EPA in coming weeks (well before EPA makes the determination), would be productive and is required by constitutional and statutory principles. My understanding is that EPA's position is that it will not meet with 21CFA before making the determination; we hope that EPA will reconsider.

I look forward to speaking with you soon.

Best regards,

Peter

Peter Simshauser
Skadden, Arps, Slate, Meagher & Flom LLP
500 Boylston Street | Boston | Massachusetts | 02116
T: 617.573.4880 | F: 617.305.4880
peter.simshauser@skadden.com

Skadden

From: Simshauser, Peter (BOS)
Sent: Tuesday, April 04, 2017 3:35 PM
To: 'Flanagan.Sarah@epa.gov'; 'fajardo.juan@epa.gov'
Subject: Lower Passaic River

Sarah and Juan,

Please see the attached correspondence.

Thanks,

Peter

Peter Simshauser
Skadden, Arps, Slate, Meagher & Flom LLP
500 Boylston Street | Boston | Massachusetts | 02116
T: 617.573.4880 | F: 617.305.4880
peter.simshauser@skadden.com

Skadden

This email (and any attachments thereto) is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this email, you are hereby notified that any dissemination, distribution or copying of this email (and any attachments thereto) is strictly prohibited. If you receive this email in error please immediately notify me at (212) 735-3000 and permanently delete the original email (and any copy of any email) and any printout thereof.

Further information about the firm, a list of the Partners and their professional qualifications will be provided upon request.

=====